1951. K File No. Coop II/51 (R)

Legal Dept—

B. BRANCH

Subject:— Rules under the Bombay Co-operative Societies Act 1925

P:10
2

File No. Coop II/51 (R)

Gen. 194 e.

159-B

Legal Department.

Arevised draft notification in place of the Deve opment Department draft is sent herewith.

2. The Development Department draft does not prescribe any time limit within which a declaration shall be made by a person who is or becomes a member of more than one credit society. In the absence of any such time limit, it will always be an open question as to when exactly the member concerned made a breach of the Rule and this uncertainty might end in frustrating the object in view. It is therefore necessary to prescribe some time limit for the making of a declaration. The draft rule has accordingly been revised to prescribe such time limit. The Department should insert in the draft rule the necessary period, say a fortnight or a month, within which the declaration should be made.

O.C. Sd/-

Secretary to Government.

U.R. toD.D. No. 4377, dated the 17th March 1951.

4 c.
V.R.K.
5/7/56

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In paragraph 2 of his note, the Secretary, Development, says "it is not clear what exactly should be the nature of the proceedings after issue of ~~the~~ notice ' to show cause' for supersession under Rule 48. It is presumed no formal inquiry as such ~~is~~ is necessaryx." The Remembrancer of Legal Affairs has already adivsed in the last paragraph of his opinion No. 13508, dated the 24th November 1949 (page 585 of D.D. File No. 2281/45-IV) as follows:-

"Rule 48(1) does not prescribe the procedure for ~~t~~ the inquiry. All that is necessary under that Rule is to give an ~~x~~ opportunity to the member or members of the managing Committee proposed to be removed to show cause and after considering the explanation, if any, offered by such member or members against whom the 'show-cause' notice is issed, to take action. In the present case, it appears that the members have offered some explanation ~~axx~~ and if their explanation requires to be further examined by a reference to documents and recording any other evidence, it would be open to Government ~~to~~ examine those documents and hear such evidence before taking any final action. The inquiry should conform to the principles of natural justice."

The above procedure may be followed in this case also. If Government (on the advice of the Registrar) thinks that further information with reference to any statements made by the Secretary on behalf of the Society is required, such information may be called for. Paragraph 7 of the draft letter is in order.

4 c.
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4 c.
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5/7/56

2. Para.3 of Secy. D.D's note- The presumption made by the Secretary, Dev. Deptt., that it is not incumbent to supply copies of the reports of the Government Officers is correct.

3. Para.4 of Secy. D.D's note- The view taken by the Secretary, Dev. Deptt., is correct.

4. As regards the draft letter at page 433 of the correspondence section, the following observations are made:-

The Remembrancer of Legal Affairs in his opinion No. 13506, dated the 24th November 1949, referred to above has pointed out the difference between the inquiry by the Registrar under section 43 of the Bombay Co-operative Societies Act and the inquiry under rule 48 of the Bombay Co-operative Societies Rules. He has stated therein that the question about the working of the Society should not be mixed up with the charges levelled against the Managing Committee under rule 48(1). It appears that the object of the inquiry by the Registrar as stated in Sec 43 (1) of the Act is that the Registrar is to bring any defect disclosed in the inquiry to the notice of the Society and if the Society is the member of the Federal Society, to the notice of the Federal Society. The Registrar is also empowered under the said section to make an order directing the society to take such action as may be specified in the order to remedy the defects within the time specified therein. No reference should therefore be made to the inquiry by the Registrar in the draft letter proposed to be given to the Society.

4 c.
V.R.K.
5/7/56

* and has pointed out that the inquiry by the Registrar would be entirely different from the proceedings taken under Rule 48 (1).

4. ~~As regards the draft letter at page 433 of t~~ correspondence section, the following observations are mate:

The Remembran er of Legal Affairs in his opinion No. 13508, datedthe 24th November 1949, referred to above has pointed out the difference between the inquiry by the Registrar under section 43 of the Bombay ~~Co~~Co-operative Societies Rules. He has stated therein that the question about the working f the Society should not be mixed up ~~with the charges levelled against the Managing~~

5. Para. 4 of the draft letter at page 433) It is stated in that paragraph that the question of such ~~proceedings~~ proceedings under section 60 of the Act can arise only after the present proceedings are over. It appears from the letter of the Secretary of the Society that the Society wants to initiate proceedings against certain members of the Society who supplied information to Government on the ground that the information so supplied was false. It is no doubt true that section 60 makes it an offence for a member to make a false report or furnish false information and section 63 provides that no prosecution under this Act shall be lodged without previous information of the Registrar. However the making of a complaint to Government regarding the affairs of the Society would not fall under section 60 of the Act. The relevant provision appears to be clause (c) of section 60 which provides that it shall be an offence under this Act if any officer or a member wilfully makes a false report or furnishes false information. This clause is to be read with the preceding clauses and it means that if an officer or a member of the Society, when required by the Registrar to furnish any information, furnishes false information or even when not

4.c.
V.R.K.
5/7/56

required by the Registrar to do so, furnishes false information which he is required to furnish under the provisions of the Act or Rules thereunder, he commits an offence under section 60. It cannot be applied to members making a complaint to Government by way of redressing their grievances. In any case as stated by Secretary D.D., the question may be considered when the proper time for its consideration arises i.e. after the present proceedings are over.

O.C. Sd/-

Remembrancer of Legal Affairs.

U.R. to Secy. D.D.,No.519-Confl, dated the 1st June 1951.

4 c.
V.R.K.
6/7/56

Office of the R.L.A.

There is no legal objection to deleting the protions as proposed by the Development Department

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Remembrancer of Legal Affairs.

U.R. to D.D, No. 11120, dated the 13 July 1951.

4 c.
V.R.K.
6/7/56

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In view of the provisions of section 34(1) Bombay Co-operative Societies Act, 1925, clause (1) of draft By-law No.2 may be revised as follows, Namely:-

"(1) to grant loans or advnces to, and to invest in debentures issued by, Co-operative Housing Societies registered in this State who are members of the society, and in the case of societies who are not members, with the general or special sanction of the Registrar, on the security of immoveable property or such other security as may be considered necessary."

2. The main By-law No. 96 which authorizes loans to Co-operative Housing Societies may also be revised on the following lines, namely:-

"96. The funds of the society shall be utilized primarily for the purpose of granting loans or advances to, or for investing in debentures issued by, credit-worthy co-operative housing societies registered in the State who are members, of the society and in the caseof such societies who are not members, with the general or speical sanction of the Registrar, on the security of immoveable property or such other security as the Board may determine, and on such terms and conditior as may from time to time be determined in accordance with these By-laws".

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Remembrancer of Legal Affairs.

W.R. to D.D., No. 15927, dated the 6th October 1951.

4 c.
V.R.K.
6/7/56

Office of the R.L.A.

By-law 94.- This by-law seems to have adopted from by-law 48(b) of the By-law of the Bombay Provincial Co-operative Land Mortgage Bank, Limited, The first part of the by-law is free from legal objection but the second part of the by-law "and all bonds in favour of the society shall be in the name of the manager" is not in order. Under sec. 23 of the Bombay Co-operative Societies Act, 1925, the registration of a society renders it a body coroporate by the name ~~xxxxxx~~ under which it is registered and it must sue or be sued in that name. Where any officer of the society is authorised to execute any conveyances on behalf of the society, he may as attorney execute the conveyance but the conveyance should be in the name of the society and not in the name of such officer. (cf, p. 92 of Halsbury's Laws of England, Vol. 8, Second Edition). The second part of the by-law should therefore be deleted.

By-law 102.- It is on the lines of by-law 62 of the By-laws of the Bombay Provincial Co-operative Land Mortgage Bank and is free from legal objection. In order to safeguard the interest of the Finance Society a condition on the lines of By-law 102 should always be embodied in a long term contract under which a loan is advanced to a member society.

O.C. Sd/-
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Remembrancer of Legal Affairs.

U.R. to D.D. No. 18012, dated 13th November 1951.

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